

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re RUPANJALI SNOWDEN,
Debtor.)

Chapter No. 11

USDC No. 12-cv-1095RSL

CHECK INTO CASH OF WASHINGTON,
INC., a Washington corporation,

Bankruptcy Case No. 09-10318

Bankruptcy Internal Appeal No. 12-S029

RUPANJALI SNOWDEN, a Washington resident,

ORDER AFFIRMING DECISION OF BANKRUPTCY COURT

Appellee.)

RUPANJALI SNOWDEN,

Cross-Appellant, }
v. }

CHECK INTO CASH OF WASHINGTON,

Cross-Appellee.)

This matter comes before the Court on cross appeals by Appellant/Cross-Appellee Check Into Cash of Washington, Inc., (“CIC”) and Appellee/Cross-Appellant Rupanjali Snowden. CIC appeals the bankruptcy court’s decision on remand awarding Ms. Snowden emotional distress and punitive damages based on CIC’s violation of the automatic stay. Ms. Snowden contends

1 for the second time that the bankruptcy court erred in limiting her recovery of attorney's fees to
 2 those incurred after May 20, 2009, and in failing to award sanctions pursuant to its civil
 3 contempt or inherent authority.

4 Having reviewed the parties' memoranda and supporting documents, the Court AFFIRMS
 5 the bankruptcy court's decision.

6 **I. DISCUSSION**

7 This is the second appeal from the bankruptcy court in this case. In 2009, the bankruptcy
 8 court found that CIC willfully violated the automatic stay when it initiated a post-petition
 9 transfer from Ms. Snowden's bank account. In re Snowden, 422 B.R. 737, 740-41 (Bankr.W.D.
 10 Wash. 2009). CIC and Ms. Snowden filed cross-appeals of the bankruptcy court's decision
 11 awarding Ms. Snowden emotional distress and punitive damages, and denying Ms. Snowden's
 12 request for attorney's fees after May 20, 2009, the date on which CIC tendered to Ms. Snowden
 13 an amount that would have resolved the stay violation. See In re Snowden, 2012 WL 600697, at
 14 *1 (W.D. Wash. Feb. 21, 2012). This Court affirmed in part and reversed in part the bankruptcy
 15 court's decision and remanded the emotional distress damages and punitive damages issues for
 16 further consideration. Id. at *5. On remand, the bankruptcy court awarded the same emotional
 17 distress damages and punitive damages to Ms. Snowden. The issues raised on this appeal again
 18 relate to the bankruptcy court's award of damages and attorney's fees.

19 **A. Standard of Review**

20 This Court reviews a bankruptcy court's assessment of damages under Section 362(k) for
 21 an abuse of discretion. In re Miller, 262 B.R. 499, 503 (B.A.P. 9th Cir. 2001). The bankruptcy
 22 court's decisions regarding attorney's fees and whether to impose sanctions under 11 U.S.C. §
 23 105(a) are also reviewed for abuse of discretion or erroneous application of the law. In re
 24 Dawson, 390 F.3d 1139, 1145 (9th Cir. 2004); In re Dyer, 322 F.3d 1178, 1191 (9th Cir. 2003).

25 **B. Emotional Distress Damages**

26 The controlling standard for awarding emotional distress damages is well settled: "to be

1 entitled to damages for emotional distress under [11 U.S.C.] § 362(h), an individual must (1)
 2 suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal
 3 connection between that significant harm and the violation of the automatic stay (as distinct, for
 4 instance, from the anxiety and pressures inherent in the bankruptcy process).” Dawson, 390
 5 F.3d at 1149 (emphasis added); cf. Pub. L. No. 109-8, § 305(1)(B) (2005) (redesignating
 6 subsection (h) as subsection (k)). “Fleeting or trivial anxiety or distress does not suffice to
 7 support an award; instead, an individual must suffer significant emotional harm.” Dawson, 390
 8 F.3d at 1149.

9 A person may clearly establish significant emotional harm in several ways. First, the
 10 person may offer corroborating medical evidence. Id. Second, the person may offer testimony
 11 by non-experts, including family members, friends, or coworkers that the person manifested
 12 serious mental anguish. Id. Third, significant emotional harm may be established if the
 13 violator’s conduct was egregious or if “the circumstances [] make it obvious that a reasonable
 14 person would suffer significant emotional harm.” Id. at 1150. Thus, corroborating evidence is
 15 not required to establish significant emotional distress as a result of a stay violation. Id.; see also
 16 America’s Servicing Co. v. Schwartz-Tallard, 438 B.R. 313, 321-22 (Bankr. D. Nev. 2010).

17 The bankruptcy court, on remand, found that Ms. Snowden was entitled to recover
 18 emotional distress damages because CIC’s violation would cause a reasonable person to suffer
 19 significant emotional distress. Dkt. # 30-5 at 4-6. Thus, the court awarded Ms. Snowden
 20 \$12,000 in emotional distress damages. Id. CIC contends that the bankruptcy court’s inquiry
 21 should have ended once it determined that there was no other direct evidence of Ms. Snowden’s
 22 emotional distress. Dkt. # 13 at 11-13. CIC’s argument hinges on its interpretation that the
 23 bankruptcy court found that Ms. Snowden did not suffer significant emotional harm. Therefore,
 24 CIC argues, whether a reasonable person would suffer significant emotional harm in her
 25 circumstances is irrelevant. Id. The Court disagrees with CIC’s interpretation of the bankruptcy
 26

1 court's order.

2 Contrary to CIC's interpretation, the bankruptcy court stated the proper standard for
 3 emotional distress damages under Dawson, and applied that standard to Ms. Snowden's case.
 4 Although the bankruptcy court did not expressly refer to the first prong of Dawson, the court
 5 began its oral ruling by affirming the prior finding that Ms. Snowden's testimony about her
 6 emotional suffering was credible. Dkt. # 30-5 at 4-6. Only after reiterating this finding that she
 7 actually suffered emotional harm did the bankruptcy court address the second Dawson prong,
 8 whether she clearly established significant emotional distress. See id. Having found that Ms.
 9 Snowden actually suffered emotional harm as a result of CIC's violation and a reasonable
 10 person would suffer similar harm in similar circumstances, the court properly awarded emotional
 11 distress damages under Dawson. The Court AFFIRMS the bankruptcy court's decision
 12 awarding emotional distress damages.

13 **C. Punitive Damages**

14 The Court next considers CIC's contention that the bankruptcy court erred in awarding
 15 punitive damages. This is a two-part inquiry. First, the Court must determine whether the
 16 bankruptcy court abused its discretion in awarding punitive damages. Fair Hous. of Marin v.
17 Combs, 285 F.3d 899, 906 (9th Cir. 2002). If not, the Court must then consider de novo whether
 18 the amount of the award "falls within the bounds of substantive due process." White v. Ford
19 Motor Co., 312 F.3d 998, 1026 (9th Cir. 2002).

20 On this appeal, CIC presents two arguments addressing the bankruptcy court's award of
 21 punitive damages: first, CIC contends that Ms. Snowden is not entitled to punitive damages in
 22 the absence of emotional damages. Second, CIC contends that the bankruptcy court erred in
 23 failing to address the constitutionality of the amount of the punitive damages award. Dkt. # 13
 24 at 10-11.

25 Having affirmed the bankruptcy court's award of emotional distress damages, the Court

1 finds CIC's first argument unpersuasive. With respect to CIC's second argument targeting the
 2 amount of punitive damages awarded, the Court finds, as it previously noted, that the one-to-one
 3 damage ratio appears to satisfy constitutional concerns in this case. See State Farm Mut. Auto.
 4 Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003) (noting that "an award of more than four times
 5 the amount of compensatory damages might be close to the line of constitutional impropriety");
 6 BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 574–75 (1996) ("Three guideposts, each of which
 7 indicates that BMW did not receive adequate notice of the magnitude of the sanction that
 8 Alabama might impose for adhering to the nondisclosure policy adopted in 1983, lead us to the
 9 conclusion that the \$2 million award against BMW is grossly excessive: the degree of
 10 reprehensibility of the nondisclosure; the disparity between the harm or potential harm suffered
 11 by Dr. Gore and his punitive damages award; and the difference between this remedy and the
 12 civil penalties authorized or imposed in comparable cases."). Though this Court may have
 13 decided the issue differently, the Court cannot conclude that the bankruptcy court's "findings
 14 were illogical, implausible or without support in the record." TrafficSchool.com, Inc. v. Edriver
 15 Inc., 653 F.3d 820, 832 (9th Cir. 2011).

16 As a result, the Court AFFIRMS the bankruptcy court's award of punitive damages.

17 **D. Attorney's Fees**

18 **1. 11 U.S.C. § 362(k) and Inherent Authority to Sanction**

19 Despite this Court's previous finding that Sternberg v. Johnston, 595 F.3d 937 (9th Cir.
 20 2010) forecloses Ms. Snowden's entitlement to attorney's fees after May 20, 2009, and its
 21 determination that the bankruptcy court did not abuse its discretion in declining to award
 22 additional attorney's fees under its civil contempt power or inherent authority to sanction,
 23 Snowden, 2012 WL 600697, at *4, Ms. Snowden raises those same issues in this appeal, dkt. #
 24 14 at 13-24. This Court's earlier decisions regarding attorney's fees and sanctions remain the
 25 law of the case and the Court will not revisit them. Thomas v. Bible, 983 F.2d 152, 154 (9th Cir.
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1983) (“Under [the law of the case] doctrine a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case.”). None of the reasons for deviating from the law of the case applies here. See Gaudin v. Remis, 379 F.3d 631, 636 (9th Cir. 2004) (reasons for deviating from law of the case are “(1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial.”).

2. Appeals

Finally, Ms. Snowden seeks to recover the attorney’s fees incurred as a result of both appeals because, she contends, they constitute damages under Section 362(k). Dkt. # 14 at 14-15. The Court disagrees and DENIES Ms. Snowden’s request.

Ninth Circuit case law allows a debtor to recover attorney’s fees in a stay violation case where certain circumstances exist. Sternberg, 595 F.3d 937, 948 (9th Cir. 2010); see also In re Schwartz-Tallard, 473 B.R. 340, 347-50 (9th Cir. 2012) (applying Sternberg to award of appellate attorney’s fees). The critical inquiry in determining whether a debtor is entitled to attorney’s fees is whether the fees were incurred in an effort to enforce the stay or in a pursuit of stay violation damages. In re Schwartz-Tallard, 473 B.R. at 348. As CIC points out, both cross-appeals have revolved around Ms. Snowden’s pursuit to recover damages resulting from the stay violation after the stay violation was remedied. See Snowden, 2012 WL 600697, at *4. Thus, the Court finds that Ms. Snowden is not entitled to recover her attorney’s fees related to the appeals and her request is DENIED.

II. CONCLUSION

For all of the foregoing reasons, the decision of the bankruptcy court is AFFIRMED.

1 DATED this 11th day of March, 2013.
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10 Robert S. Lasnik
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12 United States District Judge
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